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OFFICE OF PETITIONS

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SUITE 800
WASHINGTON DC 20005

In re Patent No. 7,616,321
Issued: November 10, 2009
Application No. 10/615,279
Filed: July 8, 2003
Attorney Docket No. 3619-140

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the "PETITION TO CORRECT PATENT TERM ADJUSTMENT" filed January 11, 2010, requesting that the patent term adjustment determination for the above-identified patent be changed from 1184 days to 1363 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by three hundred sixty-eight (368) days is **GRANTED to the extent indicated herein**.

Patentee has miscalculated the total patent term adjustment as patentee's calculation fails to take into account that Notices of Appeal were filed September 16, 2005, August 21, 2006, February 4, 2008 and January 26, 2009. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period is 741 days, beginning on September 16, 2005 and ending on January 9, 2006, beginning on August 21, 2006 and ending on March 7, 2007, beginning on February 4, 2008 and ending on October 30, 2008, beginning January 26, 2009 and ending on June 30, 2009. The Office has also determined that the period of overlap is 75 days. Thus, B delay is 75 (891 minus 741 minus 75) days. (The 891 days accorded at issuance was for B delay. The 891 days is being removed and corrected to 75 days). As such, the patent term adjustment is 368 (330 "A delay" days, plus 75 "B delay" days, minus 37 applicant delay days) not 1363.

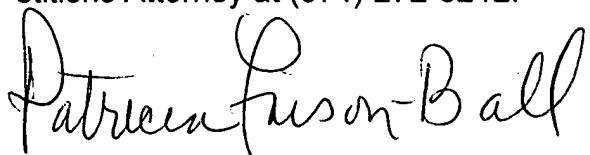
The Office acknowledges the authorization to charge the \$200.00 fee set forth in 37 CFR 1.18(e) to the credit card provided.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month**

or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **three hundred sixty-eight (368) days**.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,616,321 B2

DATED : November 10, 2009

INVENTOR(S) : Jeff Korn

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1184) days

Delete the phrase "by 1184 days" and insert -- by 368 days--